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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Petition of Cox Virginia Telcom, Inc.	)	
Pursuant to Section 252(e)(5) of the	)	CC Docket No. 00-249
Communications Act for Preemption	)	
Of the Jurisdiction of the Virginia	)	
State Corporation Commission	)	
Regarding Interconnection Disputes	)	
With Verizon Virginia, Inc. and	)	
For Arbitration	)	

PETITION FOR ARBITRATION OF COX VIRGINIA TELCOM, INC.

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PETITION FOR ARBITRATION OF COX VIRGINIA TELCOM, INC.

Cox Virginia Telcom, Inc. ("Cox"), pursuant to Section 252(e)(5) of the Communications Act of 1934 (the "Act") and Section 51.803 of the Federal Communications Commission's ("Commission") rules, respectfully petitions the Commission to arbitrate an interconnection agreement between Cox and Verizon Virginia, Inc. ("VZ-VA").[1] On January 26, 2001, the Chief of the Commission's Common Carrier Bureau released a Memorandum Opinion and Order, DA 01-197, in the above-referenced docket that preempted the authority of the Virginia State Corporation Commission ("VSCC") to arbitrate this agreement. This pleading is being filed in

[1] Cox filed a Motion for Combination of Petitions for Hearing on December 12, 2000, requesting that the Commission establish a combined proceeding to hear its arbitration petition and the arbitration petition filed by WorldCom, Inc. ("WorldCom") on October 26, 2000 concerning its interconnection dispute with VZ-VA. Similarly, AT&T Communications of Virginia, Inc. ("AT&T") filed a motion on December 15, 2000, requesting that the Commission combine its petition for arbitration involving VZ-VA with that of WorldCom, Inc. for hearing purposes. These motions remain pending. The Commission established CC Docket Nos. 00-218, 00-249 and 00-251 (the "Three Proceedings") to consider the arbitration petitions filed by WorldCom, Cox and AT&T, respectively.

accordance with the directions of the subsequent Letter Ruling issued on March 27, 2001, by the Chief of the Common Carrier Bureau ("Letter Ruling").

I. BACKGROUND

Cox and VZ-VA first entered into an interconnection agreement (the "Initial Agreement") for Virginia in February of 1997.[2] Attached as Exhibit 3 is a copy of the Initial Agreement, representing the interconnection agreement under which the parties are currently operating. After the expiration of the Initial Agreement's term in July of 1999, the parties began negotiations with the intent of entering into a renewal (the "Renewal Agreement") of the Initial Agreement. Throughout the course of the negotiations, the parties have continued to operate under the Initial Agreement pursuant to a provision that keeps its terms in effect until a successor agreement can be executed.

In February of 2000, it became necessary for Cox to reinitiate negotiations pursuant to *Armstrong Communications*.[3] This action was taken when the parties were unable to complete the Renewal Agreement within the deadline established by Cox's initial request.

In the second round of negotiations, the parties were unable to agree on mutually-acceptable language for a Renewal Agreement. In the wake of this impasse, Cox filed a pleading with the VSCC on July 27, 2000, conditionally seeking state arbitration of the interconnection dispute, pursuant to Section 252(b)(1) of the Act and Virginia law.

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[2] The parties to the Initial Agreement were Cox and Bell Atlantic, Inc. ("BA-VA"). BA-VA subsequently changed its name to Verizon Virginia, Inc. The Certificates of Public Convenience and Necessity previously issued to BA-VA were cancelled and re-issued to VZ-VA pursuant to the VSCC's Order of August 4, 2000, in Case No. PUC000217. This action followed the VSCC's approval of the merger of Bell Atlantic Corporation and GTE Corporation by its Order of November 29, 1999, in Case No. PUC990100.

[3] Armstrong Communications, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 871 (Comm. Carr. Bur. 1998), *recon. denied* 14 FCC Rcd 9521 (1999).

Cox believed that its arbitration with VZ-VA should be conducted pursuant to the requirements of the Act so that the Renewal Agreement would comply with both state and federal law. Cox thus requested that the VSCC conduct the state arbitration in accordance with the national provisions for interconnection agreement arbitrations established by the Act. This approach would ensure that the parties' interconnections arrangements would be governed by a single arbitration that would determine both state and federal rights and obligations, and result in a single, unified interconnection agreement.

In responding to Cox's pleading, the VSCC stated that it could not grant the relief sought by Cox because that "might be considered an exercise of jurisdiction under the Act and, therefore, a waiver of the Commonwealth's sovereign immunity."[4] In light of this holding, the VSCC dismissed Cox's pleading "so that it may proceed before the FCC."[5] Accordingly, Cox brought the dispute to the Commission, and the Commission subsequently preempted the jurisdiction of the VSCC for purposes of arbitrating a Renewal Agreement between Cox and VZ-VA.

II. THE COMMISSION SHOULD ARBITRATE

Although Cox and VZ-VA have reached agreement on most technical terms and conditions, they have been unable to reach agreement on every provision deemed by one or both parties to be a necessary element of the Renewal Agreement. Cox accordingly seeks the Commission's arbitration, by hearing, of the unresolved issues remaining between the parties ("Unresolved Issues"). Cox will continue to negotiate with VZ-VA over the Unresolved Issues

[4] Order of Dismissal, dated November 1, 2000, in Case No. PUC000212 ("Virginia Order"), at 3.
[5] *Id.* at 5.

throughout the arbitration process, and Cox will keep the Commission informed about any progress that is made.

For the Commission's convenience, this Petition for Arbitration includes the following exhibits:

1. A list (the "Statement of Unresolved Issues") setting forth every Unresolved Issue about which the parties have thus far been unable to agree is attached as Exhibit 1. The Statement of Unresolved Issues provides the positions of the parties on Unresolved Issues. These positions appear to Cox to be so far apart as to suggest that no agreement can be reached absent Commission resolution. The Statement of Unresolved Issues also sets forth the specific contract language proposed by each party to deal with each issue.[6]

2. The most current version of the interconnection agreement being negotiated by the parties (the "Cox Interconnection Agreement") is attached as Exhibit 2. The Cox Interconnection Agreement contains both the language that has been agreed upon by the parties to date and the wording proposed by Cox and by VZ-VA, respectively, to address the Unresolved Issues.[7]

3. A copy of the Initial Agreement, which is the interconnection agreement under which the parties currently operate, is attached as Exhibit 3.

4. A list ("Resolved Issues List") of the issues resolved by the parties since Cox filed its pleading with the VSCC on July 27, 2000 is attached as Exhibit 4.

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[6] The Statement of Unresolved Issues includes what Cox believes to be the latest language proposed by each party to resolve each issue. Cox has made a good faith effort to accurately record the language proposed by VZ-VA on these points.

[7] Like the Statement of Unresolved Issues, the Cox Interconnection Agreement includes the latest language proposed by each party to resolve each issue, and represents Cox's good faith effort to accurately record the language proposed by VZ-VA on these points.

5. A list ("Personnel List") identifying each person with knowledge upon whom Cox intends to rely to support its position on each of the Unresolved Issues is attached as Exhibit 5.

6. A Statement of Relevant Authority identifying any proceeding pending before the VSCC or the Commission relating to the Unresolved Issues is attached as Exhibit 6.

7. Copies of the parties' filings and the VSCC's order in the original state proceeding are attached as Exhibit 7, which is separately bound.

Cox has not raised any issues that require support through cost models, cost studies or other studies. Consequently, no such materials are attached.

As the Statement of Unresolved Issues, the Cox Interconnection Agreement and the Resolved Issues List make clear, the parties have reached agreement on a substantial number of issues. At present, there are only eleven Unresolved Issues between the parties to be arbitrated by the Commission.

A. THE UNRESOLVED ISSUES

The Unresolved Issues set forth in the Statement of Unresolved Issues are discussed below issue-by-issue. To the extent that characterization of the Unresolved Issues is helpful, most of the issues can be assigned to one or more of four general problem areas. First, in some instances, VZ-VA attempts to impose on Cox an obligation that is imposed by the Act only on an incumbent local exchange carrier ("ILEC"), such as VZ-VA, and that may not be imposed on Cox by an ILEC, a state commission or the Commission. Second, VZ-VA seeks in some instances to obtain Cox's waiver of a right that the Act affords to a competitive local exchange carrier ("CLEC"), such as Cox. Third, VZ-VA seeks in some cases to avoid obligations imposed on ILECs by the Act. And fourth, VZ-VA in some instances seeks to assert authority over Cox's behavior that is not granted or permitted by the Act. While Cox has not attempted to place each of the Unresolved Issues into one of these characterizations, they serve as themes that weave through the fabric of the issues.

The Commission also has been asked to arbitrate interconnection disputes between AT&T and VZ-VA, and WorldCom and VZ-VA, and has established the Three Proceedings for those purposes.[8] Cox, AT&T and WorldCom (collectively, the "petitioners") have been directed by the Arbitrator "to identify the common issues in their petitions, to the extent possible." Letter Ruling at 2. Cox's petition contains ten Unresolved Issues that also will be raised in either or both of the AT&T and WorldCom arbitration proceedings. The petitioners have agreed to refer to issues that are involved in two or more of the Three Proceedings as "Common Issues." Cox identifies below the ten Unresolved Issues that are Common Issues. It also identifies the one Unresolved Issue that is involved only in its arbitration proceeding (the "Non-Common Issue").

Moreover, as directed by the Letter Ruling, the petitioners have adopted a numbering convention that assigns the same number to each Common Issue in each of the three separate petitions for arbitration. This convention tracks the assignment of issues into five segments proposed by the petitioners in their March 13, 2001 Prefiling Memorandum. Cox has thus prefixed a Roman numeral to its Unresolved Issues using the numbering convention as follows:

Segment 1: Cox Issues = Roman numeral I;

Segment 2: UNE Recurring and Non-Recurring Prices Issues = Roman numeral II;

Segment 3: Joint AT&T and WorldCom Non-Pricing Issues = Roman numeral III;

Segment 4: Issues Unique to Worldcom = Roman numeral IV; and

Segment 5: Issues Unique to AT&T = Roman numeral V.

[8] *See supra* n. 1.

Following the Roman numeral prefix will be an Arabic numeral designating that issue's order within the segment identified by the Roman numeral.

As explained below in Section III, the petitioners also reached agreement on certain hearing procedures that, if adopted by the Arbitrator, would permit Common Issues to be resolved through a combined format while preserving the parties' right to individual resolutions and contract language. Generally speaking, these procedures would enable the Arbitrator to first adopt general unifying principles for resolution of the Common Issues, and to then assess whether each party's proposed contract language for that issue is consistent with the governing principle. For the Commission's convenience, Cox also includes – at the end of the discussion of each Unresolved Issue below – the general principles ("General Principles") proposed and agreed to by the petitioners to resolve each Common Issue.

I.1. VZ-VA MAY NOT, THROUGH ITS DESIGNATIONS OF INTERCONNECTION POINTS OR BY DISCOUNTING THE COMPENSATION IT OWES COX, REQUIRE COX TO PAY FOR VZ-VA'S DELIVERY OF VZ-VA'S TRAFFIC TO COX'S NETWORK.

COMMON ISSUE

Issue I.1 involves the costs incurred by VZ-VA when it delivers traffic to Cox's network. VZ-VA's proposal requires that the parties establish multiple interconnection points (IPs) for their delivery of traffic to one another at locations that are "geographically relevant" to the local calling area of VZ-VA's customers. Such "geographically relevant IPs" must be established no further than 25 miles from the rate centers serving VZ-VA's customers. Further, VZ-VA proposes that if/where Cox fails to establish such geographically relevant IPs, Cox will be forced to discount by an amount equivalent to VZ-VA's transport rate, from any compensation owed by VZ-VA to Cox. By contrast, Cox proposes that the parties each establish IPs located at one another's switch locations, and that each be responsible for all transport costs associated with the delivery of its traffic to the other.

This issue underscores the importance of utilizing the nationwide switched network in a manner that maximizes effectiveness and efficiency for all carriers to the benefit of all customers, rather than forcing competitors to build duplicative and wasteful facilities so that VZ-VA's costs alone are reduced. The "geographically relevant interconnection points" proposed by VZ-VA represent an attempt to limit the transportation costs that VZ-VA would bear in delivering its traffic to Cox. Indeed, under VZ-VA's proposal, Cox would inappropriately bear the costs of the facilities used by VZ-VA in the delivery of its traffic to Cox's network.

As the Commission has explained, "Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or less efficient interconnection points."[9] While not required to do so by law, Cox has agreed to establish multiple interconnection points at the VZ-VA switches where Cox interconnects, thus obligating Cox to hand off its traffic to VZ-VA at VZ-VA's doorstep. By contrast, VZ-VA insists that it should be permitted, by its imposition of "geographically relevant" interconnection points, to hand off its traffic to Cox somewhere well within VZ-VA's network, *i.e.,* far from Cox's doorstep, or, alternatively, to force Cox to discount the compensation rate that is owed by VZ-VA for such traffic. Cox bears the costs of all the facilities used in the door-to-door delivery of its traffic, and it believes that VZ-VA must do the same.

[9] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 15609 (1996) (the *"First Report and Order"*) (subsequent history omitted).

VZ-VA's proposed language would shift the expense of transporting VZ-VA's traffic away from VZ-VA and toward Cox, notwithstanding the preference under the Act for the originating carrier to bear such expense. A not too subtle distinction exists between the level of costs that would be borne by each party for transporting this traffic. The cost of such transport through VZ-VA's existing facilities is clearly less dear than the cost of Cox's constructing new facilities to handle this traffic. The Renewal Agreement should reflect that Cox and VZ-VA are in a co-carrier relationship and that each is responsible for the cost of delivering its traffic to the other.

The VZ-VA proposal also would unnecessarily interfere with Cox's ability to engineer its network to minimize Cox's costs of providing service to its customers. By contrast, Cox's proposal leaves each party free to engineer its own network to best serve its customers' needs at the lowest possible cost. It recognizes that sound engineering practice dictates that the parties cooperate, through bilateral discussion, in selecting interconnection points that are fair to both in view of each party's present facilities as well as those to be acquired in the near term. Moreover, under Cox's proposal, each party is fairly compensated for the transport and termination of the traffic originated by the other.

Cox urges the Commission to adopt Cox's proposal to resolve this issue. The Commission should approve the contract language proposed by Cox at Section 1 of the Statement of Unresolved Issues (Exhibit 1).

GENERAL PRINCIPLES:

- *A CLEC has the right to designate any technically feasible point of interconnection, including a single point of interconnection per LATA.*
- *An ILEC cannot compel a CLEC to establish multiple interconnection points, although a CLEC is free to voluntarily agree to multiple points.*

- *A LEC cannot assess charges on another LEC for traffic that originates on the LEC's network.*
- *A LEC is financially responsible to provide transport for its originating traffic to the other LEC's terminating switch serving the end user.*

I.2. VZ-VA MAY NOT REQUIRE THAT COX ELIMINATE ITS MILEAGE-SENSITIVE RATE ELEMENT AS A COMPONENT OF ITS ENTRANCE FACILITIES RATE.

COMMON ISSUE

Issue I.2 is similar to Issue I.1. It represents another attempt by VZ-VA to shift the cost of transporting traffic from VZ-VA to Cox. VZ-VA proposes to limit Cox's transport charge to no more than a non-distance sensitive Entrance Facility charge. Under this proposal, Cox would be precluded from charging a mileage-sensitive rate element for entrance facilities, even though its costs of providing these facilities vary by distance.

VZ-VA's proposal conflicts with the Act and the Commission's rules. In the *First Report and Order*, the Commission states: "New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In these situations, the incumbent and the new entrant are *co-carriers* and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement."[10] The proposal by VZ-VA to limit Cox's charges for entrance facilities does not comply with this principle. In addition to requiring Cox to pay all of the costs of delivering its traffic to all of VZ-VA's interconnection points, VZ-VA proposes that Cox pay VZ-VA's reasonable costs for VZ-VA's transport of its traffic to Cox's interconnection points. This cost-shifting would be accomplished by requiring Cox to provide VZ-VA a discount from Cox's tariffed transport rates, which include a mileage-sensitive

[10] *First Report and Order*, 11 FCC Rcd at 15781 (emphasis added).

rate element. VZ-VA attempts to defend its proposal on the basis that there are differences in the parties' network architecture. Yet any such differences are irrelevant to resolution of this issue. VZ-VA should not be permitted to create a discriminatory cost structure by imposing costs on Cox that it is not obligated to pay.

VZ-VA's proposal concerning the apportionment of transport costs between it and Cox should be rejected by the Commission. The Commission should approve the contract language proposed by Cox at Section 2 of the Statement of Unresolved Issues (Exhibit 1).

GENERAL PRINCIPLES:

- *VZ-VA's proposal to limit a CLEC's transport charge to no more than a non-distance sensitive Entrance Facility charge is unlawful.*
- *VZ-VA's proposal imposes charges on a CLEC for transport of VZ-VA's originating traffic, interferes with a CLEC's right to designate a point of interconnection, and is inconsistent with a CLEC's right to symmetrical reciprocal compensation.*
- *A LEC is financially responsible to provide transport for its originating traffic to the other LEC's terminating switch serving the end user.*

I.3. 47 U.S.C. § 251(C)(6) AND 47 C.F.R. § 51.223(A) DO NOT PERMIT VZ-VA TO COMPEL COX TO FURNISH VZ-VA COLLOCATION AT COX FACILITIES IN THE SAME MANNER THAT VZ-VA, AS AN ILEC, IS COMPELLED TO FURNISH COLLOCATION TO COX AT VZ-VA FACILITIES.

COMMON ISSUE

VZ-VA is demanding that Cox provide it with the same physical collocation arrangements to which Cox, as a CLEC, is entitled under Section 251(c)(6) of the Act. However, Section 251(c)(6) makes clear that the obligation to permit physical collocation on the premises of equipment necessary for interconnection or access to unbundled network elements applies only to ILECs, and not to CLECs. Although Section 251(h) of the Act empowers the Commission to rule that a CLEC is to be treated as an ILEC under certain circumstances, the Commission has not done so – nor could it do so – with respect to Cox's provision of telecommunications services in Virginia. Section 51.223 of the Commission's rules states: "A state may not impose the obligations set forth in section 251(h)(1) of the Act, unless the [Commission] issues an order declaring that such LECs or classes or categories of LECs should be treated as incumbent LECs."[11] In the absence of such a Commission ruling, a CLEC such as Cox cannot be forced to comply with the physical collocation obligation imposed on ILECs by the Act.

Cox recognizes its general duty to interconnect, set out at Section 251(a)(1) of the Act, with the facilities or equipment of other carriers. Methods other than physical collocation are available by which such interconnection can be facilitated. Currently, Cox and VZ-VA utilize a mid-span meet arrangement (whereby the parties each contribute to the construction of a single shared fiber ring) used by both for the purpose of interconnecting their networks. The parties have agreed to include this arrangement as an option in the Renewal Agreement. Additionally, Cox has offered to provide VZ-VA leased entrance facilities as a convenient means to accomplish such interconnection. However, it is unwilling – and cannot lawfully be compelled – to shoulder the physical collocation obligations imposed on ILECs by Section 251(c)(6).

For these reasons, the Commission should reject VZ-VA's demand for reciprocity in physical collocation obligations. The Commission should approve the contract language proposed by Cox at Section 3 of the Statement of Unresolved Issues (Exhibit 1).

GENERAL PRINCIPLES:

- *ILECs have no right under the Act to collocate in CLEC premises.*
- *The obligation to provide collocation applies only to ILECs.*
- *A CLEC may voluntarily offer collocation to an ILEC but the CLEC cannot be compelled to do so.*

[11] 47 C.F.R. § 51.223.

I.4. SECTION 251(C)(2) OF THE ACT DOES NOT PERMIT VZ-VA TO DICTATE THE VOLUME OF TRAFFIC ON A TRUNK GROUP USED BY COX TO SEND TRAFFIC TO A VZ-VA TANDEM SWITCH FOR TERMINATION TO A VZ-VA END OFFICE.

COMMON ISSUE

Expressing concern about exhausting its tandem switching capacity, VZ-VA has set out to limit the volume of traffic that Cox routes to VZ-VA tandem switches. VZ-VA proposes that Cox be compelled to establish trunks directly to VZ-VA end offices at any time that such tandem traffic exceeds certain modest levels. However, Section 251(c)(2) makes clear that Cox may choose its points of interconnection with VZ-VA. Further, the Commission supports the CLEC's choosing those points of interconnection (at the ILEC's tandem or end office) that will best enhance the CLEC's own efficiency.[12]

Cox does not agree with VZ-VA's assertion that transporting Cox's traffic through VZ-VA's tandem switches contributes in any significant way to capacity exhaust. Nonetheless, Cox voluntarily has proposed to adopt a limitation on the amount of traffic exchanged with VZ-VA end offices by way of a VZ-VA tandem. Specifically, Cox has offered a moderate threshold that is focused on the volume of three DS-1s (which equals 72 separate voice channels), above which the parties would agree to implement direct-end office trunking. By contrast, VZ-VA proposes the exceedingly low threshold for such direct trunking of a single DS-1 (24 voice channels).

If the Commission deems it necessary to adopt a threshold for direct-end office trunking, Cox urges it to implement a higher trigger than that proposed by VZ-VA, given that the economies enjoyed by each company differ widely. VZ-VA generates huge economies of scale

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[12] *First Report and Order*, 11 FCC Rcd at 15608 (Section 251(c)(2) permits CLECs "to make economically efficient decisions about where to interconnect.").

due to the magnitude of its facilities. As a far smaller carrier, Cox is unable to achieve the lower costs and efficiencies that attend VZ-VA's ubiquitous operations. The significantly higher costs experienced by Cox in deploying its network must be taken into account when setting the traffic volumes that will trigger an obligation on Cox to build or acquire facilities connecting Cox's switches and VZ-VA's end offices. Cox and most carriers ordinarily construct or acquire facilities packaged at the DS-3 level (28 DS-1s or 672 voice channels), which is when the volume of traffic justifies engineering a direct end-office interconnection. It would be highly wasteful to devote such facilities to carrying only one DS-1 level of traffic, as proposed by VZ-VA.

Therefore, Cox requests that the Commission reject VZ-VA's proposal for restricting tandem traffic. Instead, if the Commission concludes that a trigger of some sort is required, it should establish a minimum of three DS-1s as the threshold for compulsory direct end-office trunking. The Commission should approve the contract language proposed by Cox at Section 4 of the Statement of Unresolved Issues (Exhibit 1).

GENERAL PRINCIPLES:

- *CLECs cannot be compelled under the Act to interconnect at ILEC end offices.*
- *A CLEC may voluntarily agree to direct end office trunking under specified circumstances as an accommodation, but it retains the right to choose any technically feasible point of interconnection, including a single POI per LATA.*

I.5. VZ-VA MAY NOT BE PERMITTED TO TREAT DIAL-UP CALLS TO INTERNET SERVICE PROVIDERS ("ISPS") AS NON-COMPENSABLE TRAFFIC FOR PURPOSES OF RECIPROCAL COMPENSATION.

COMMON ISSUE

Dial-up calls to ISPs should be treated as local traffic for purposes of reciprocal compensation. The carrier to which such traffic is delivered incurs the cost of routing the traffic through its network and terminating it to the ISP, and these terminating costs are avoided by the carrier delivering such traffic. To ensure that costs are fairly apportioned, all traffic exchanged between LECs must be compensated either as access or as local. The obvious classification for ISP-terminated traffic is local rather than toll.

VZ-VA, however, asserts that it can assign ISP-terminated traffic to a third, non-compensable category. This argument ignores the fact that the VSCC has previously ruled that ISP traffic is subject to reciprocal compensation as local traffic in a proceeding brought by Cox against VZ-VA.[13] Moreover, the U.S. Court of Appeals for the D.C. Circuit has remanded to the Commission its preliminary holding that ISP-terminated traffic is either mixed or interstate for jurisdictional purposes.[14]

The Commission should rule that ISP-bound calls must be treated as local traffic for billing purposes. The Commission should approve the contract language proposed by Cox at Section 5 of the Statement of Unresolved Issues (Exhibit 1).

GENERAL PRINCIPLES:

- *The law does not distinguish traffic based upon whether or not it is bound for an ISP.*
- *Therefore, for the purpose of reciprocal compensation, ISP-bound traffic is local traffic for which reciprocal compensation is due.*

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[13] *See* VA SCC Case No. PUC970069, issued October 24, 1997.
[14] *See Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000). The Commission has adopted an order on remand in this proceeding, which has not been released. *See* Federal Communications Commission Resolves Carrier Compensation Rules for Internet Traffic, *Press Release*, Apr. 19, 2001. Cox reserves the right to modify its discussion of this issue in light of that order when it is released.

I.6. VZ-VA MAY NOT IMPOSE INFEASIBLE METHODS FOR DETERMINING TOLL VERSUS LOCAL TRAFFIC.

COMMON ISSUE

VZ-VA proposes that the parties use an infeasible method to determine whether a given call exchanged between the parties is local or toll – *i.e.*, it claims that a comparison should be made between the originating and terminating "points" of the call. By contrast, Cox proposes to differentiate between local and toll traffic by comparing the originating and terminating NXX codes. This approach is the only means currently available, except outright guessing, for determining the jurisdiction of calls for billing purposes. It accordingly is standard practice throughout the telecommunications industry.

The current standard has served the industry well for many years, and Cox can think of no compelling reason for changing it now. Indeed, it is almost certain that VZ-VA's own billing systems are programmed to compare the originating and terminating NPA-NXXs on a call in order to determine its proper jurisdiction. Yet VZ-VA would abandon the use of this NPA-NXX comparison and substitute instead the vague mechanism of comparing "the originating and terminating points of the complete end-to-end communication." Application of this new procedure would require the parties to look beyond the NPA-NXXs in an effort to ascertain origination and destination "points," terms that have no accepted industry meaning. In fact, Cox is unaware of any billing systems in use today that could make VZ-VA's proposed comparison.

The current standard for differentiating local and toll traffic is well understood, and Cox opposes its abandonment in favor of an untried standard that would create confusion within the industry, with no concomitant benefit, while it is being structured and implemented. The Commission accordingly should rule that the determination of whether traffic exchanged between LECs is local or toll should be made by comparing NPA-NXX codes. The Commission should approve the contract language proposed by Cox at Section 6 of the Statement of Unresolved Issues (Exhibit 1).

GENERAL PRINCIPLE:

- *The determination of local versus toll traffic is based upon the calling and called NPA-NXXs.*

I.7. VZ-VA MAY NOT REQUIRE THAT COX ENGINEER AND/OR FORECAST VZ-VA'S TRUNK GROUPS.

NON-COMMON ISSUE

VZ-VA seeks to force Cox to forecast VZ-VA's own outbound interconnection traffic. If adopted, this proposal would put Cox in the posture of projecting how much traffic originated by VZ-VA will be sent to Cox for termination. Traffic forecasting is a collaborative process: each party, using its own engineering data regarding its outbound demand, contributes to an overall forecast of the interconnection trunking needed between each other. VZ-VA cannot shirk its responsibilities and unilaterally impose that burden upon Cox.

In negotiations, VZ-VA has steadfastly refused to agree to forecast the traffic it will send to Cox, and has demanded instead that Cox provide VZ-VA's outbound forecast. Cox has readily agreed to provide to VZ-VA a forecast of Cox's own outbound traffic and to provide to VZ-VA information about projected fluctuations in its traffic demands. But Cox has no access to VZ-VA's engineering data that would be used to forecast VZ-VA's traffic and VZ-VA has not offered either to provide such data or to reimburse Cox's costs if Cox were to provide such an engineering service for VZ-VA. VZ-VA also has failed to furnish Cox with a compelling reason why Cox should assume VZ-VA's obligations and engineering costs to make such forecasts.

The responsibility of every LEC to forecast its outbound traffic is well understood in the telecommunications industry. In every interconnection agreement that Cox has executed with competitive LECs and wireless service providers, the parties have all agreed to forecast their own outbound traffic. And, with the exception of VZ-VA, in every interconnection agreement Cox has executed with other ILECs, including Verizon (formerly GTE) in California and Verizon-RI (formerly Bell Atlantic) in Rhode Island, the parties have all agreed to forecast their own outbound traffic. Moreover, as recently as February of this year, Verizon freely negotiated interconnection agreements in other states in which it voluntarily accepted responsibility for forecasting its own traffic. The contract language that Cox proposes here substantially matches the forecasting language that Verizon recently agreed to in these other states. It thus remains a mystery to Cox why VZ-VA now eschews this forecasting practice and instead is taking a stance with regard to Cox that is at variance with industry practice.

The Commission should not permit VZ-VA to require Cox to provide a forecast of VZ-VA's own traffic. The Commission should approve the contract language proposed by Cox at Section 7 of the Statement of Unresolved Issues (Exhibit 1).

GENERAL PRINCIPLES: Not Applicable

I.8. VZ-VA MAY NOT MONITOR OR AUDIT COX'S ACCESS TO AND USE OF CUSTOMER PROPRIETY NETWORK INFORMATION MADE AVAILABLE TO COX THROUGH THE INTERCONNECTION AGREEMENT.

COMMON ISSUE

VZ-VA is demanding that Cox allow it to monitor and audit Cox's access to and use of customer propriety network information ("CPNI") that Cox receives from VZ-VA pursuant to the interconnection agreement. As Cox understands VZ-VA's position during negotiations on this issue, VZ-VA seems concerned with its liability in a civil action arising from its grant to Cox of access to CPNI, and wishes to limit this liability through monitoring and auditing of Cox's activities. This is a specious argument, however, which could well be designed to cloak VZ-VA's proprietary interest in learning how Cox uses CPNI. The Commission and the VSCC are the appropriate authorities to monitor and enforce CPNI protections. VZ-VA should not usurp their authority and act as Cox's regulator. VZ-VA's proposal begs the question of why VZ-VA is so committed to taking extra steps and bearing the additional expense of making sure that Cox is complying with its own statutory and contractual CPNI obligations for the alleged purpose of affording VZ-VA greater legal security.

Cox is bound both by federal law and by the agreed terms of the Renewal Agreement to protect the confidentiality of CPNI. Cox, not VZ-VA, would be liable for penalties under federal law for any violation of this confidentiality. Additionally, Cox has undertaken to indemnify VZ-VA for any loss that it may incur due to Cox's failure to protect such information. It thus remains completely unclear to Cox why VZ-VA fears being drawn into a legal controversy over Cox's behavior and why VZ-VA deems indemnification an inadequate remedy in the unlikely event that VZ-VA is held accountable for Cox's actions.

Cox urges the Commission to accept Cox's proposal that VZ-VA has no authority to monitor Cox's use of CPNI. The Commission should approve the contract language proposed by Cox at Section 8 of the Statement of Unresolved Issues (Exhibit 1).

GENERAL PRINCIPLES:

- *Nothing in the Act gives Verizon the right to monitor a CLEC's access to and use of CPNI.*
- *A CLEC may voluntarily agree to such a procedure or agree that such an audit right is mutual.*
- *The Commission and the VSCC are the appropriate authorities to monitor and enforce CPNI protections.*

I.9. VZ-VA MAY NOT LIMIT OR CONTROL RATES AND CHARGES THAT COX MAY ASSESS FOR ITS SERVICES, FACILITIES AND ARRANGEMENTS.

COMMON ISSUE

VZ-VA's attempt to place caps on the charges that Cox may assess for its services, facilities and arrangements is contrary to the Act and the Commission's rules. The two parties may mutually agree to cap rates and charges, but VZ-VA is attempting to impose such caps on Cox unilaterally, thereby usurping the authority of regulatory bodies over Cox's rates and charges.

Under applicable law at both the federal and state level, there is no basis for including any limitation in the interconnection agreement on Cox's prices. Under federal law, Cox is a nondominant carrier and its rates are presumptively lawful.[15] Indeed, the Commission has detariffed the interstate services that a CLEC such as Cox would offer.[16] Instead, the Commission has determined that it can rely on the complaint process to address any potentially unreasonable rates charged by nondominant carriers, such as CLECs.[17] Similarly, under Virginia law, Cox's rates are subject only to price caps and not to rate of return regulation. *See* VAC 5-400-180.D.3. Under the VSCC's price cap regulations, rates above those charged by the ILEC

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[15] 47 C.F.R. § 61.3(y) (carriers not found to be dominant are non-dominant); Tariff Filings for Nondominant Common Carriers, *Memorandum Opinion and Order*, 8 FCC Rcd 6752, 6756-7 (1993) (determining that one-day notice for tariffs was sufficient because of availability of complaints and other post-filing remedies) (*"Tariff Streamlining Order"*), *vacated on other grounds, Southwestern Bell Corp. v. FCC*, 43 F.3d 1515 (D.C. Cir. 1995) (overturning range of rates provision), *readopted in relevant part* Tariff Filing Requirements for Nondominant Carriers, *Order*, 10 FCC Rcd 13653 (1995); Policies and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, *First Report and Order*, 85 F.C.C.2d 1, 31 (1980) (Non-dominant carriers "do not possess the market power necessary to sustain prices either unreasonably above or below costs . . .").

[16] *See* Hyperion Telecommunications, Inc., *Memorandum Report and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd 8596 (1997) (detariffing competitive access services); Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order*, 11 FCC Rcd 20730 (1996) (subsequent history omitted) (detariffing domestic interexchange services).

[17] *See, e.g., Tariff Streamlining Order*, 8 FCC Rcd at 6756-7 ("[A]ggrieved parties can . . . avail themselves of the Commission's complaint process to seek a determination of any nondominant carrier tariff filing.")

are permitted "unless there is a showing that the public interest will be harmed" and even these rate regulations do not apply to any services "comparable to services classified as competitive for the incumbent." VAC 5-400-180.D.3.c, d.

Moreover, the Act does not give a state commission (or, by extension, the Commission) the power to set CLEC rates for anything other than reciprocal compensation. The only rate-setting provisions of section 252 relate to unbundled network elements, wholesale resale and reciprocal compensation, and the unbundled element and wholesale resale provisions apply exclusively to ILECs. 47 U.S.C. § 252(d); *see also* 47 U.S.C. § 251(c)(3), (4). There is no comparable authority to set rates for CLECs and, as the Commission has held, states do not have the power to impose *any* interconnection obligations on CLECs other than those in the Act. *First Report and Order*, 11 FCC Rcd at 16109; 47 C.F.R. § 51.223 (no ILEC interconnection obligations may be imposed on CLECs without a determination under section 251(h) of the Act). Thus, the Act precludes the Commission from capping Cox's rates as proposed by VZ-VA.

The Commission should reject VZ-VA's proposal and approve the contract language proposed by Cox at Section 9 of the Statement of Unresolved Issues (Exhibit 1).

GENERAL PRINCIPLE:

- *Nothing in the Act authorizes VZ-VA to limit or control a CLEC's charges to an ILEC for services, facilities, and arrangements.*

I.10. VZ-VA MAY NOT UNREASONABLY TERMINATE AN INTERCONNECTION AGREEMENT.

COMMON ISSUE

VZ-VA seeks a date certain for the termination of the Renewal Agreement, irrespective of any effort that may be underway on that date to reach agreement on a replacement agreement. VZ-VA representatives mentioned two concerns during negotiations with Cox on this issue.

First, VZ-VA stated that some CLECs may not negotiate a replacement agreement in good faith, thereby permitting the Renewal Agreement to be "evergreen," *i.e.*, to live well beyond the termination date specified in the Renewal Agreement. Because many changes in the telecommunications industry will most likely take place during the term of the Renewal Agreement, VZ-VA expressed a strong desire to implement an updated replacement agreement as soon as possible after the termination date. Second, VZ-VA stated that it desires to establish a date certain when provisions in the Renewal Agreement will no longer be available for adoption by other CLECs pursuant to Section 252(i) of the Act or the BA/GTE Merger Conditions ("Merger Conditions"), adopted by the Commission on June 16, 2000 in CC Docket No. 98-184.

In an effort to accommodate VZ-VA's first concern, Cox is willing to accept a provision under which the Renewal Agreement could be terminated by a regulatory body upon a showing by VZ-VA that Cox was either negotiating in bad faith or failing to negotiate for a replacement agreement. In addition, the Act affords VZ-VA another remedy for any stalling on Cox's part: the Commission has held that, if a party feels that the other is not negotiating in good faith, the aggrieved party may petition for arbitration under Section 252.[18] However, VZ-VA cannot be granted the power to act unilaterally in terminating the Renewal Agreement, without regard to the service being furnished to Cox customers in reliance on the services and facilities governed by that contract. Thus, Cox believes that the Renewal Agreement must remain in effect after its expiration so long as the parties are engaged in meaningful negotiations for a replacement agreement. Cox therefore opposes any date certain for terminating the Renewal Agreement

[18] "Because section 252 permits parties to seek mediation 'at any point in the negotiation,' and also allows parties to seek arbitration as early as 135 days after an incumbent LEC receives a request for negotiation under section 252, we conclude that Congress specifically contemplated that one or more of the parties may fail to negotiate in good faith, and created at least one remedy in the arbitration process." *First Report and Order*, 11 FCC Rcd at 15574-5.

without regard to due process rights. Cox and its customers need the assurance that VZ-VA services and facilities will continue to be provided under the Renewal Agreement unless VZ-VA can demonstrate to a regulatory body that Cox is negotiating for a replacement agreement in bad faith.

In addition, VZ-VA's proposed 12-month time frame for negotiating a replacement agreement completely ignores the fact that good faith negotiations frequently take longer than 12 months to produce such an agreement. As the history of the negotiations and arbitration proceedings between Cox and VZ-VA in this case amply demonstrates, a 12-month period following expiration of the previous agreement is wholly inadequate for that purpose. The Initial Agreement's term lasted from February of 1997 until July of 1999. Even though Cox and VZ-VA have negotiated without faltering for over a year and a half beyond its expiration date, including during the arbitration proceedings at the VSCC and before the Commission, the execution of the Renewal Agreement still appears to be months away. Yet, had the termination provision which VZ-VA seeks been a part of the Initial Agreement, VZ-VA could have unilaterally stopping providing Cox with services and facilities 9 months ago, in July of 2000, without any consideration for the efforts of both parties to enter into the Renewal Agreement.

VZ-VA's interests are adequately protected by Cox's proposal for the intervention of a regulatory body if VZ-VA believes that Cox is stalling to perpetuate the Renewal Agreement. Regulatory oversight is crucial to assuring that service continues to Cox customers or, in the event of a calamity, that such service is terminated in an orderly fashion. VZ-VA does not need greater protection than that provided through such regulatory oversight. The Cox proposal furnishes VZ-VA an adequate path to seek relief if it concludes that Cox is stalling in its negotiations for a successor agreement.

The Commission also should reject VZ-VA's argument that it needs "date certain" protection against other CLECs' adoption of provisions of the Renewal Agreement for an indefinite period. Such an issue may be appropriately raised in a proceeding examining procedures for adopting contractual provisions in accordance with the Act. The Commission could institute a rulemaking of general applicability on this issue and focus on the rights and obligations of VZ-VA and all CLECs. But the present arbitration proceeding, which concerns only Cox and VZ-VA, is not the proper venue for litigating such an all-inclusive issue. Moreover, an interconnection agreement is not the proper mechanism for attempting to thwart the statutory rights of third-party CLECs to adopt provisions of that agreement pursuant to Section 252(i) of the Act or the Merger Conditions.

The Commission should reject VZ-VA's strong-arm attempts to force Cox to accept a date certain for terminating the Renewal Agreement, without regard for any efforts that Cox is expending at expiration to negotiate a replacement agreement. Cox's customers need the assurance that they will not be left without service even though Cox is negotiating with VZ-VA in good faith for such a replacement. They also need the protection of termination provisions in the Renewal Agreement which spell out clearly that, before VZ-VA is empowered to shut off their services, a regulatory body has had a substantial role in assessing whether Cox's negotiating performance has been conducted in bad faith.

The Commission should approve the contract language proposed by Cox at Section 10 of the Statement of Unresolved Issues (Exhibit 1).

GENERAL PRINCIPLES:

- *VZ-VA cannot compel a CLEC to take service under tariff terms or an SGAT at expiration of an Interconnection Agreement.*

- *So long as negotiations for a successor Agreement have been requested or are ongoing, the current Agreement should continue in effect.*
- *VZ-VA may not terminate an interconnection agreement without Commission oversight.*

I.11. VZ-VA MAY NOT SUMMARILY TERMINATE COX'S ACCESS TO OSS FOR COX'S ALLEGED FAILURE TO CURE ITS BREACH OF SCHEDULE 11.7 OR SECTIONS 1.5 OR 1.6.

COMMON ISSUE

VZ-VA proposes that it should be able to summarily terminate Cox's access to its Operational Support Systems ("OSSs") if it believes that Cox has failed to cure an alleged breach of Schedule 11.7 or Sections 1.5 or 1.6 of the interconnection agreement (each of which involves Cox's OSS obligations). Specifically, VZ-VA's proposed language would allow VZ-VA to discontinue unilaterally Cox's access to VZ-VA's OSS within ten days of its notification to Cox alleging that Cox has, in VZ-VA's sole judgment, breached its OSS contractual obligations.

This Unresolved Issue is yet another example of a VZ-VA proposal that is draconian, overbroad and overreaching. Under VZ-VA's proposal, Cox's access to OSSs could be terminated for perceived abuses without regard to the negative impact that such termination would have on Cox's customers. Cox has sufficient motivation to protect VZ-VA's OSSs without VZ-VA's need to resort to such dire remedies. Language agreed to by the parties in other sections of the Renewal Agreement is replete with adequate remedies that allow VZ-VA to fully protect its OSSs from interference, impairment, breach, or other harms.

VZ-VA's demand for excessively punitive remedies is another instance of its attempting to assert unilateral authority over a CLEC. This power grab is not permitted by the Act and should be rejected by the Commission. The Commission should approve the contract language proposed by Cox at Section 11 of the Statement of Unresolved Issues (Exhibit 1).

GENERAL PRINCIPLES:

- *VZ-VA does not have the right to suspend a CLEC's right to use the OSS UNE.*
- *Other remedy provisions of the ICA are adequate to protect VZ-VA's interests.*

B. ISSUES THAT HAVE BEEN SETTLED

Since Cox's petition for state arbitration was filed with the VSCC, Cox and VZ-VA have continued to negotiate in an effort to resolve both Unresolved Issues and several open issues for which contract language had not been finalized at that time. A large number of such issues were settled during the course of these negotiations through the parties' adoption of mutually-agreeable contract language. The Resolved Issues List (Exhibit 4) sets forth the issues resolved by the parties since Cox filed its pleading with the VSCC on July 27, 2000.

III. CONSOLIDATION

A. THE PETITIONERS' PREFILING MEMORANDUM

Cox, WorldCom and AT&T held several telephone conferences during the period between the issuance of the Public Notice and the Pre-Filing Conference. The petitioners' purpose was to develop and recommend a procedure to the Arbitrator for combining their Common Issues into a single hearing. The petitioners hoped that the resulting proposal would achieve administrative efficiency without sacrificing the rights of the parties to individual resolutions that serve their separate business needs.[19]

The petitioners recognized that, for a variety of reasons, each petitioner was proposing somewhat different contract language to resolve its Common Issues with VZ-VA. The dissimilarities in the proposed contract language stem from the facts that: (1) each petitioner started negotiating with VZ-VA at a different time; (2) each petitioner has used a template that

[19] The petitioners determined that no efficiency can be gained by combining for hearing any Non-Common Issue.

has evolved differently over the course of its negotiations with VZ-VA; and (3) most importantly, each petitioner has unique business interests and network configurations, all of which influence the choice of specific contract language. Through discussions, however, the petitioners determined that in a number of cases their proposed contract language differs only slightly and in essence is intended to convey the same meaning. With regard to Cox's contract language proposed for those Common Issues discussed in Section II above, Cox believes that as many as one-half fall into this category. In the remaining cases, although the petitioners' specific contract language proposals may differ, each of their proposals with respect to a given Common Issue is consistent with a common underlying principle of law or policy. The petitioners thus decided that, with respect to Common Issues, they would ask the Arbitrator, first, to rule on the common underlying principle and, second, to accept each petitioner's unique contract language as long as that language is consistent with the underlying principle. Equally important, the petitioners are in agreement that with respect to all Common Issues, the contract language proposed by VZ-VA is inconsistent with the governing principle or policy.

The product of the petitioners' discussions was the Prefiling Memorandum ("Memo") filed by the petitioners with the Commission on March 13th. It proposes that the arbitration proceedings on behalf of the petitioners be conducted in five segments, three of which would include one or more Common Issues. The Memo further suggests that the thirteen Cox issues – now reduced to eleven as a result of subsequent successful negotiations with VZ-VA – be heard in Segment 1 of the proceeding. This approach would serve the goal of administrative efficiency since the Cox issues (ten of which are Common Issues) already are well developed and are ready for hearing. It also would alleviate the administrative burden on Cox (which has relatively few issues to arbitrate with VZ-VA compared to WorldCom and AT&T) by enabling it to litigate all of its issues at one time.

B. RESOLVING COMMON ISSUES

At the Pre-Filing Conference, the Arbitrator expressed concern about how the proposals contained in the Memo would lead to greater efficiency in administering the three arbitration proceedings unless the petitioners agreed to common positions on resolving the Common Issues and to common contract language. The petitioners responded that, because they each had distinct business plans and different negotiation histories with VZ-VA, they would oppose the imposition by the Arbitrator of a requirement that they embrace both common positions and common contract language. However, they agreed to furnish the Arbitrator with more detailed proposals to deal with Common Issues and an explanation of how administrative efficiency could be achieved without sacrificing the petitioners' individual rights. This Section III, Consolidation, is intended to comply with that commitment.

The benefits of using such a consolidated approach for dealing with Common Issues is best illustrated with a concrete example. Concerning Cox's issue I.4 regarding compulsory end office trunking discussed in Section II above, all three petitioners agree that, as a matter of law and Commission policy, CLECs cannot be compelled to interconnect at ILEC end offices. Notwithstanding this, one of the petitioners, perhaps motivated by a concern regarding a history of ILEC blocking of the petitioner's inbound traffic at a tandem, may propose contract language that obligates each party to build direct end office interconnection when a particular threshold of tandem-routed traffic is met. Another petitioner, perhaps given its understanding of, and faith in, the collaborative process needed to engineer effectively its interface with the ILEC, may propose a trigger that obligates the parties to agree upon a method for dealing with tandem-routed traffic when a particular threshold is met, providing that a request for direct interconnection will not be unreasonably denied. Finally, a third petitioner may propose contract language that clearly preserves its right to choose the most efficient point(s) at which to exchange traffic with the ILEC, to better control its costs of interconnection.

The fact that the first petitioner may agree to contract language which, in effect, waives its right to interconnect at any feasible point does not change the underlying principle noted above and should not affect the other petitioners' right to do so. Similarly, the fact that the second petitioner may agree to contract language that obligates it to, upon reaching a threshold of tandem-routed traffic, mutually agree on a method to address the capacity issue should have no effect on the other two petitioners' rights, obligations or proposed contract language. And neither of the first two petitioners' contract language should undercut the third petitioner's proposed contract language regarding its straightforward right to interconnect with the ILEC at any feasible point.

As illustrated, the petitioners have valid reasons for pursuing different contract language in resolution of the Common Issue, and the underlying principle shared by all of them supports this. Under the proposed approach, the Common Issue relating to compulsory end office trunking, which is present in all three arbitration proceedings, would be heard once by the Arbitrator, rather than being heard three separate times. The petitioners would expect the decision rendered by the Arbitrator to affirm the principle noted above. The Arbitrator would then assess each petitioner's proposed contract language with respect to the Common Issue and approve it, so long as it is consistent with the governing principle. Similarly, the Arbitrator would reject VZ-VA's proposed language, which is at odds with the governing policy.

C. HEARING PROCEDURES FOR COMMON ISSUES

At one end of the spectrum of available hearing procedures to deal with Common Issues is the mechanism of holding three separate proceedings. Each issue would be heard in a separate, petitioner-specific proceeding with all three proceedings scheduled for different days. Unfortunately, this mechanism would maximize the number of hearing days required to resolve all three proceedings. On the other hand, it would offer the maximum due process protection to the parties in each proceeding by assuring that their issues are decided free of the influence of the other two proceedings. Even though some issues are Common Issues, the Arbitrator would hear three different presentations of evidence with regard to each issue at different times and then decide on the proper resolution of each issue, keeping in mind any need to coordinate different resolutions among the proceedings.

At the opposite end of the spectrum is the mechanism of holding one consolidated proceeding. Each issue, common and non-common, would be litigated in a single proceeding and all affected petitioners would be required to accept a common position on that issue and to propose common contract language in resolution of that issue. This mechanism would minimize the number of hearing days required to resolve all three proceedings. However, it also would have a devastating effect on each party's due process right to have its issues resolved in a manner that best suits its business needs. No coordination of resolutions would be required of the Arbitrator, since all the petitioners would receive the same outcome, whether it was appropriate or not for their business purposes.

While the greatest administrative efficiency in hearing time might be achieved through this mechanism, it ignores important and real differences among the petitioners concerning their business plans, network designs and functionality, and negotiating histories with VZ-VA.

Although all three petitioners are CLECs, they do not share a uniform approach to providing telecommunications. The petitioners each bring unique skills and strategies to the competitive arena and their business plans can be expected to vary widely. The Act clearly anticipates and provides for diverse arrangements between CLECs and ILECs. The Act does not dictate that CLECs alter their current networks or business plans to enter into a particular arrangement with ILECs, nor does it require them to coordinate among themselves to obtain uniform arrangements or common agreements with the ILECs.

Cox believes that a process that strikes a balance between the above extremes is the most appropriate. A combined proceeding can be designed which both promotes administrative efficiency and protects individual rights. Under such an approach, each Common Issue would be litigated once by the involved petitioners[20] and VZ-VA. The petitioners would present evidence and argument on, and recommend adoption of, a common underlying principle for resolution of each Common Issue. The Arbitrator would then decide whether the principle jointly proposed by the petitioners, on the one hand, or that proposed by VZ-VA, on the other, should control resolution of the issue. But each party also would have the right to propose different contract language to resolve that issue under its specific circumstances. That is, each party would be permitted to argue in favor of an outcome for a Common Issue that differs from that of the other parties, and would be allowed to present its own witnesses and to propose its own contract language.

In this fashion, the Arbitrator would enjoy the efficiencies that result from hearing the petitioners' evidence on Common Issues in a consolidated fashion and from their articulating a

[20] As noted previously, some Common Issues are shared by all three petitioners and some are shared only by two of the petitioners.

single time the underlying principle(s) that should govern resolution of their common disputes with VZ-VA. At the same time, the approach would ensure that each party's due process rights to an individual resolution of a Common Issue that accommodates its business plans is sufficiently protected. Non-Common Issues would be heard in three separate segments of the proceeding, during which only the petitioner interested in those issues would participate. This approach would speed the resolution of each segment.

Although the recommended approach will require more hearing time than simply forcing the petitioners to adopt a unified approach to Common Issues, it nonetheless will take less time than holding three separate arbitration proceedings. In the example of Common Issue I.4 provided above, for instance, the issue would be heard once in the recommended proceeding, rather than being heard three times. Combining the presentations of the parties' evidence will permit the Arbitrator to hear everything relating to Common Issues at the same time and only once. Indeed, the Arbitrator need simply adopt a hearing schedule setting the date and time when each issue will be heard. Then, any party with an interest in a particular issue will be on notice that it should be prepared to participate in the presentation of evidence on that issue on the announced date and time.[21]

For Common Issues, the Arbitrator may elect to empanel witnesses. Even though each witness in the panel format would present direct testimony and be cross-examined separately, the Arbitrator could explore their testimony in the most time-effective manner. In this way, the Arbitrator could gain a deeper understanding of the differences in the parties' proposed outcomes and the rationales for their different contract language proposals.

[21] As noted above, to reduce its administrative burden, Cox requests that its 11 issues with VZ-VA be heard in a single segment of the proceeding. It notes that neither of its co-petitioners objects to this request. Memo at 6.

IV. CONCLUSION

For the reasons stated above, Cox respectfully requests that the Commission arbitrate the interconnection terms and conditions being disputed by Cox and VZ-VA. Further, Cox respectfully requests that the Commission grant Cox the relief sought herein and resolve the Unresolved Issues in accordance with Cox's submissions in this case. In addition, Cox respectfully requests that the Commission adopt the procedures recommended above for resolving Common Issues in a combined format and Non-Common Issues in a separate format.

Respectfully submitted,

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April 23, 2001

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 23rd day of April, 2001, copies of the foregoing "Petition for Arbitration of Cox Virginia Telcom, Inc." were served as follows:

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